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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/594,955	06/15/2000	Ralph F. Conley JR.	DBT-002	9875

7590 01/25/2005

Steven J Rosen  
4729 Cornell Road  
Cincinnati, OH 45241

EXAMINER

BLAIR, DOUGLAS B

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/594,955

Applicant(s)

CONLEY, RALPH F.

Examiner

Douglas B Blair

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Claims 1-55 are currently pending in this application. Claims 56-66 were cancelled by the applicant's amendment filed 11/16/2004.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 28, 32, 36-37, 40, 41, and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Number 5,742,768 to Gennaro et al..
4. All 102 rejections are the same as in the preceding office action.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. All 103 rejections are the same as in the preceding office action.

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7. Claims 2-27, 29, 31, 33-34, 42-48, and 50-53 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 5,742,768 to Gennaro et al. in view of U.S. Patent Number 6,141,010 to Hoyle.

8. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 5,742,768 to Gennaro et al. in view of U.S. Patent Number 6,141,010 to Hoyle in further view of U.S. Patent Number 6,678,663 to Mayo.

9. Claims 35, 38-39 and 54-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 5,742,768 to Gennaro et al. in view of U.S. Patent Number 6,141,010 to Hoyle in further view of U.S. Patent Number 5,666,500 to Roberson.

#### ***Response to Arguments***

10. Applicant's arguments filed 11/16/2004 have been fully considered but they are not persuasive. The applicant argues the following points: (a) Clearly the "embedded menu" in Gennaro is not presented when an end-user clicks on the banner as in the rejected claims of the present application but rather when the end-user clicks on one of the hot spots; (b) The "banner" in Gennaro clearly is just heading or title for the "embedded menu" and is not a banner used for advertising; (c) With regards to claim 28, Gennaro does not disclose publishing software for producing banner software for displaying banners nor does Gennaro disclose a means for storing the banner software for distribution to the end-user computer; (d) The banner in Gennaro doesn't change, no mention is made of any message in Gennaro, and nothing in Gennaro even hints of such an element, purpose, or function; (e) It would not have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Gennaro

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with the teachings of Hoyle because there does not appear to be any disclosure or teaching or suggestion of any user interaction with advertising; (f) With regard to claims 34 and 53, there is nothing in Gennaro or Hoyle to alert the user that banner has been updated or changed enticing the user to go to the banner and see the change such as in the present claim.

11. As to point (a), if the embedded menu is displayed when the user's cursor is over a hot spot on the banner then the embedded menu would have to be displayed when the banner is clicked on because the process of clicking on the banner would require a user to put the cursor over the hot spot thus displaying the menu.

12. As to point (b), the independent claims of the present application do not define a banner as advertising. Furthermore even if they did, the embedded menu in Gennaro can be considered advertising because it makes the menu options known to those viewing the menu.

13. As to point (c), Gennaro teaches a website with embedded menus. Software for changing the content of a website is inherent to any website and a means for storing the website is also inherent to any website.

14. As to point (d), the text of the menu can be considered a message because it is part of an http response message from the web server. The claim language specifying the alerting means is very broad and general. For instance the applet taught by Gennaro in the cited portion could be considered an alerting means because it shows the message of the embedded menu. There is no mention in claims 36 and 37 of alerting of a change in the banner.

15. As to point (e), in the context of making information known, Gennaro does teach advertising. So a person implementing Gennaro trying to have more relevant menus would be motivated to combine the teachings of Gennaro with Hoyle.

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16. As to point (f), the cited portion of Hoyle clearly teaches real time changes in a banner for a client. By displaying the changed message the banner in Hoyle is alerting the use of a change.

***Conclusion***

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

18. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas B Blair whose telephone number is 571-272-3893. The examiner can normally be reached on 8:30am-5pm Mon-Fri.

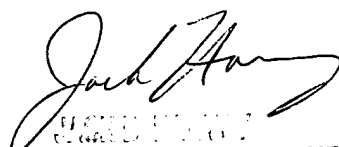
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Harvey can be reached on 571-272-3896. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Douglas Blair

DBB

  
SIGNED [illegible]  
SUPERVISOR, PATENT EXAMINER